IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.393/2005.

Shri. Sadanand Fondu Sinai Kerkar,
House No.357, Simepaine,
Mardol, Taluka Ponda, Goa. .. Petitioner.

Versus

1. Shri. Gajanan Vishwambhar Sinai Kerkar and his wife.

2. Mrs. Savita Gajanan Sinai Kerkar,
Both r/o. Shanti Co-op. Hsg. Society Ltd., Pandit Satawalekar Marg, Mahim Mumbai -11.
Heirs of late Devdatta Vishwambhar Sinai Kerkar

3. Shri. Shalini Devdatta Sinai Kerkar widow of late Devdatta Sinai Kerkar and her children.

4. Mr. Nitish Devdatta Sinai Kerkar and his wife,

5. Mrs. Deepa Nitish Sinai Kerkar .. Respondents

6. Mr. Nimish Devdatta Sinai Kerkar and his wife

7. Mrs. Sweta Nimish Sinai Kerkar,
All r/o. Near Kerkar Hospital, Aquem, Margaon-Goa.

8. Mrs. Namita Mahesh Prabhu
d/o. LateDevdatta Sinai Kerkar
and her husband

9. Mr. Mahesh Dinkar Prabhu
both r/o. Prabhu Hospital, Main City Area, Kolhapur, Maharashtra.

10. Smt. Lata Manohar Sinai Kerkar,
widow of late Manohar Sinai
Kerkar, and his children,

11. Mr. Ketan Manohar Sinai Kerkar,
and his wife

12. Mrs. Ashwini Ketan Sinai Kerkar

13. Mr. Samir Manohar Sinai Kerkar,
unmarried, all r/o. National Co-op.
Hsg. Society, Banner Road, Near
Aundh-Pune.

14. Mr. Raoji Bhaskar Sinai Kerkar
and his son (expired)
LRs of deceased

a. Mrs. Neela Manohar Bharne and .. Respondents
her husband,

b. Manohar Sadashiv Bharne
both r/o. Shantaram Society,
Chimbel, Goa.

c. Mrs. Mangala Anil Dande
and her husband,

d. Mr. Anil Dattatray Dande
both r/o. Shivkrupa Bldg.,
St. Inez, Panaji-Goa.

e. Mrs. Nutan Rajendra Naik
and her husband

f. Mr. Rajendra Mahadev Naik,
both r/o. 'Vasti Raj,' Taleigao,
Cardoz Vaddo, Ilhas.

15. Mr. Bhaskar Raoji Sinai Kerkar
and his wife,

16. Mrs. Rita Bhaskar Sinai Kerkar,
all r/o. op. Damodar Saw Mill,
Davorlim, Margao-Goa.

17. Mr. Santoba Dessai
Real Estate Developer and Builder,
Dessai House, Khandpabandh,
Ponda House. .. Respondents.

Mr. S. S. Kantak, Senior Advocate with Ms. Gauri Bhonsule,Advocate for the petitioner.

Mr. V. B. Nadkarni, Senior Advocate with Mr. H. D. Naik, Advocate for the respondents No. 1 to 13 and 17.

Coram :- **R. S. MOHITE, J.**

Date : - 30th August, 2007.

ORAL JUDGMENT :

Heard both sides. The petitioner impugns an order dated 8.7.2005 passed by the Civil Judge, Junior Division, Ponda. The application filed by the petitioner under Order 8 Rule 10 of C.P.C. Has been dismissed and written statement filed by the defendants No.1 to 13 and 17 has been taken on record. It is not disputed before me that the period of 30 days for filing written statement has expired on 15.4.2004 and the period of 90 days for filing for written statement has expired on 14.12.2004. The learned Senior Counsel Mr. S. S. Kantak appearing on behalf of petitioner has brought to my attention the observations contained in para. No.42 of the judgment of the Apex Court in the case of *Kailash Versus Nanhku and others reported in AIR 2005, SCW, page 2346.* The Apex Court has observed as under :

> " A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court

> may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist."

It appears from the observations of the Apex Court that if the defendant wants to file written statement seeking extension of time beyond the period of 90 days, he has to file an application along with the evidence if any and make a prayer for extension. Admittedly, in the present case no such application was made on behalf of original defendant. Permission to file written statement after a period of 90 days has been given on an application by the original plaintiff under Order 8 Rule 10 of C.P.C. The reply of the defendants to the application under Order 8 Rule 10 principally did not give any details as to why the written statement could not be filed within a period of 90 days. There was no separate application made under Order 8, Rule 1 of C.P.C., the making of which has been read into the provision of Order 8, Rule 1 of C.P.C. by the Apex Court in the case of *Kailash Versus Nanhku and others* (Supra.)

Both the parties submit that by consent, the impugned judgment and order may be set aside and liberty may be given to the defendant to make an application seeking permission for taking written statement on record by condoning the delay and extending the time.

The Advocate for the respondent states that he will make such application within a period of 2 weeks from today. If such

application is made, same will be decided on its own merits within a period of 8 weeks from making of the said application, without considering the observations made by this Court. Application under Order 8, Rule 10 of C.P.C. will also be considered afresh along with this application under Order 8, Rule 1 of C.P.C. Rule is made absolute accordingly and interim relief stands vacated.

R. S. MOHITE, J.

SMA